IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-08-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE R. BANUMATHI

HABEAS CORPUS PETITION NO.366 OF 2007

Smt. Krishnaveni
W/o. Senthil @ Senthil Kumar .. Petitioner

Vs.

1. State of Tamil Nadu,
   Rep. by its Secretary to Government, Home
   Prohibition & Excise Department,
   Fort St. George, Secretariat,
   Chennai 600 009.

2. The Commissioner of Police,
   Greater Chennai,
   Egmore, Chennai 8. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Habeas Corpus to call for the records pertaining to the order of detention passed by the second respondent in his proceedings in No.55/2007 dated 21.2.2007 and set aside the same and direct the respondents to produce the detenu Senthil @ Senthil Kumar, S/o. Ramar, now confined in Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.S. Swamidoss Manoharan
for Mr.S. Sathish Rajan

For Respondents : Mr.M. Babu Muthu Meeran
Addl. Public Prosecutor

Amicus curiae : Mr.Abudukumar Rajarathinam

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O R D E R

P.K. MISRA, J

Wife of the detenu has filed this Habeas Corpus Petition challenging the order of detention dated 21.2.2007 passed by the Commissioner of Police in exercise of the power conferred under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) on the allegation that the detenu is a Goonda.

2. In the grounds of detention, reference has been made to 12 adverse cases. From the details of such cases, as apparent from the grounds of detention, it appears that Adverse Case No.1 of R4 Pondy Bazaar P.S. Cr.No.798/2005, Adverse Case No.3 of, Adverse Case No.6 of Central Crime Branch 'X' Cr.No.830/2006, Adverse Case No.7 of S7 Madipakkam P.S. Cr.No.1852/2006, Adverse Case No.9 of 'X' Cr.No.54/2007, Adverse Case No.10 of S7 Madipakkam P.S. Cr.No.548/2007, Adverse Case No.11 of S7 Madipakkam P.S. Cr.No.549/2007 and Adverse Case No.12 of S7 Madipakkam P.S. Cr.No.550/2007 were registered under Section 420 IPC. Adverse case No.2 of S7 Madipakkam P.S. Cr.No.1722/2005 was registered under Sections 420 & 506(ii) IPC, Adverse Case No.4 of S7 Madipakkam P.S. Cr.No.341/2006 was registered under Sections 294(b),341 and 506 (ii) IPC, Adverse Case No.5 of T3 Kunrathur P.S. Cr.No.792/2006 was registered under Sections 420 & 406 IPC and Adverse Case No.8 of Central Crime Branch 'X' Cr.No.47 of 2007 was registered under Sections 420, 465, 467, 468 r/w.471 IPC. All these cases were allegedly committed during the year 2005 or 2006. Modus operandi as per the narration available in the grounds of detention was to the effect that the detenu would go to different shops dealing with consumer durables and household articles and introduce himself as proprietor of shop M/s.Sri Sivasakthi Company and would take the consumer durables and household articles for the purpose of dealing them as dealer and would issue cheques. Subsequently, however, most of the cheques got bounced. Apart from the above adverse cases the detaining authority has apparently passed the order of detention on the ground case, which is alleged to have occurred on 24.10.2006, on which date the detenu came to the shop M/s. Vijex and Company selling copier xerox, computer printers and spare parts for computers and placed orders for several computer printers. The shop owner issued three invoices and the detenu issued three cheques towards part payment, out of which the first cheque for

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Rs.50,000/- was cleared, but other two cheques for Rs.1,00,000/- and Rs.2,63,000/-, were returned as there was no sufficient funds available. When being contacted, the detenu used to give reply that the amount would be cleared within a few days. On 30.1.2007, Thiru. Chandrasekar, Manager of M/s.Vijex and Company, came to M/s. Sri Sivasakthi Company and asked about payment of Rs.3,63,700/- and the detenu replied threateningly and declined to make any payment and stated that the person would be taken to task and shall not be spared if they go to police. It is also indicated that the detenu took out an iron rod from the shop and rushed to assault Thiru. Chandrasekar and his colleague Prakash, who had accompanied him and the detenu chased them. Thereafter, a complaint was lodged by Chandrasekar on 10.2.2007 before the Commissioner of Police and on proper direction, the Inspector of Police, Central Crime Branch registered a case in Cr.No.69 of2007 under Sections 406, 420, 341 and 506(ii) IPC and the case was taken up for investigation. The detenu was arrested and produced before the Judicial Magistrate, Alandur, Chennai on 12.2.2007. The grounds of detention further indicated :-

> "3. ... The offences u/s.341, 406, 420 and 506(ii) IPC relates to wrongful restraint, breach of trust, cheating and dishonestly inducing delivery of property and criminal intimidation as such punishable under Chapters 16, 17 and 22 of the Code. Tr. Senthil @ Senthil Kumar is habitually committing crime and in accordance to the ground case, he under the guise of arranging huge loans to the businessmen having regard to the amplitude of the gravity of the offence, perpetrated in an organised and systematic manner, the name of the offence and it is deleterious effects not only against the victims, but also against the civilized society at-large, will amount to disturbance of public order and thus he acted in a manner prejudicial to the maintenance of public order as such he is a Goonda as contemplated u/s 2(f) of the Tamil Nadu Act 14 of 1982."

Thereafter the detaining authority concluded that the detenu was likely to be released on bail and passed the order of preventive detention.

3. In the Habeas Corpus Petition it has been explained by the deponent that certain electronic goods purchased from one M/s. Shakshi Electronics by her husband could not be sold because they were defective and consequently there was delay in payment. Said M/s.Shakshi Electronics preferred a complaint during December, 2005 before the Assistant Commissioner of Police, Madipakkam. The said Assistant Commissioner started threatening the detenu with dire consequences. The detenu met the Asst. Commissioner with his Advocate and paid a sum of Rs.1,00,000/- by cash and and requested to pay the same to the complainant and get receipt accordingly.

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But, the Assistant Commissioner evaded in getting receipt and started demanding more money from the detenu. Hence, the detenu made a complaint on 16.2.2006 to the Commissioner of Police against the Asst. Commissioner of Police. The detenu also approached the High Court seeking direction under Section 482 Cr.P.C which was disposed of on 14.12.2006 granting liberty to the detenu to proceed further against the police official before the appropriate forum in accordance with law. It is stated that because of such complaint the police officials started foisting cases against the detenu. It is therefore claimed that the order of detention passed on such foisted cases and on account of malafide motive is required to be quashed.

4. Apart from the above, it has been contended that there has been delay in consideration of the representation sent by the petitioner to the first respondent on 6.3.2007 and the representation dated 7.3.2007, sent by the detenu. It is further contended that while dealing with some of the bail applications it has been observed by various Courts including the High Court that the dispute was civil in nature and, therefore, the preventive order of detention was unwarranted. The ground case, on the basis of which the detention order was passed, was also denied in toto and it has been highlighted that even though the alleged occurrence took place on 30.1.2007, the complaint was given on 10.2.2007. It has been further contended that in a road accident, the detenu suffered a fracture and he was not even in a position to walk and, therefore, the allegation that the detenu chased the complainant with iron rod was an absolute false allegation. It is further contended that conclusion of the detaining authority that the detenu was likely to be released on bail was mere ipse dixit and cannot be accepted.

5. Last but not the least, it is contended that all the adverse cases mentioned are primarily cases under Section 420 IPC and even the ground case is also primarily a case under Section 420 IPC and it cannot be said that the detenu acted in a manner prejudicial to the maintenance of public order as all the incidents can be said to be involved only a law and order situation and not prejudicial to the maintenance of public order. Therefore, the subjective satisfaction of the detaining authority is completely vitiated.

6. It is true that the petitioner has made specific allegations of malafide against the Assistant Commissioner of Police. However, such Assistant Commissioner of Police has not been impleaded as a party. Moreover, the proposal of preventive detention has been initiated by the Central Crime Branch and not by the Assistant Commissioner of Police against whom allegations have been made. Merely because some allegations have been made in this

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petition or certain observations have been made in matters relating to bail orders, it cannot be assumed that the entire Police Department has acted with malice against the detenu. Moreover, by now it is well settled that allegations of malafide are more often made, but rarely substantiated.

7. In the above view of the matter, it is difficult to accept the contention regarding mala fide on the part of the State Government or the Commissioner of Police, who were the authorities concerned in the matter relating to preventive detention in the present case. Moreover, it has been already indicated that the person against whom malafides have been alleged has not been impleaded either in his personal capacity as is normally expected to be done or even in his official capacity.

8. The second contention is relating to delay in disposal of representation. It appears that two representations had been made almost simultaneously, one by the detenu and the other by wife of the detenu. Both were received on 8.3.2007 and both were disposed of by the Minister on 23.3.2007 and rejection letter was served on 28.3.2007, after being dispatched by post. We do not find any discernible delay so as to vitiate the order of detention.

9. Next contention is to the effect that dispute in question was civil in nature as has been observed in bail orders and, therefore, no preventive order of detention should have been passed. In this context it is also stated that even though the occurrence relating to the ground case allegedly took place on 30.1.2007, the complaint was given on 10.2.2007, after considerable delay which indicates that false case has been foisted. It is also stated that as the detenu had suffered fracture, the allegation that detenu chased the complainant in the ground case was absolutely false and the ground case is a foisted one.

10. The order of preventive detention is based on the subjective satisfaction of the detaining authority. The observation made by various courts including the High Court, while dealing with bail applications with regard to various disputes were civil in nature, can only be considered as prima facie observation and not any final conclusion in the matter. Moreover, since the order is on the basis of subjective satisfaction, the High Court, while dealing with the writ petition under Article 226 of the Constitution of India, is not expected to sit in appeal over such conclusion of the detaining authority. Such contention is therefore without any merit.

11. In this context it is also stated that the detenu had suffered fracture in a road accident and therefore was not in a position to run as has been alleged in the ground case and thus the

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entire ground case should be taken to be fabricated is also not required to be examined in the present Habeas Corpus Petition keeping in view the limited scope of interference by the High Court in such matters pertaining to the merits of the allegations. The detaining authority at the time of passing the detention order is not expected to record evidence and to find out whether there is any truth in the allegation by making any in-depth analysis.

12. Next contention of the petitioner is to the effect that since the detenu was admittedly in custody, there was no necessity of passing an order of detention. In this context, it is submitted that conclusion of the detaining authority that the detenu is likely to be released on bail is mere ipse dixit of the detaining authority.

13. Law is now well settled that even where the detenu is in custody in connection with some pending case, the order of detention can be passed, provided the detaining authority comes to the conclusion regarding the imminent possibility of the detenu being released on bail. (See(2006) 3 SCC (Cri) 17 (IBRAHIM NAZEER v. STATE OF TAMIL NADU AND ANOTHER), (2006) 3 SCC (Cri) 50 (SENTHAMIL SELVI v. STATE OF TAMIL NADU AND ANOTHER) and (2006) 3 SCC (Cri) 324 (A. GEETHA v. STATE OF TAMIL NADU AND ANOTHER)

14. In the present case, it is no doubt true that the detenu was allegedly involved in several cases, but since all the cases were "white- collar offences", it is very reasonable to conclude that in such matters normally bail is granted by the court even before completion of investigation. The very fact that an order of anticipatory bail was granted in one case and an order of bail has been granted by a Judicial Magistrate in another case only buttresses such conclusion of the detaining authority that there was imminent possibility of the detenu being released on bail. In such circumstances, we are unable to interfere with the conclusion of the detaining authority on the above aspect.

15. Last contention, which in fact requires most serious attention, is regarding the nature of the offences committed and necessity of passing the order of preventive detention with a view to prevent the detenu from acting in a manner prejudicial to the maintenance of public order.

16. From various adverse cases noticed and even the ground case relied upon by the detaining authority, it is apparent that gravamen of the charge against the detenu is that he has committed offence under Section 420 IPC by taking consumer durables and household articles from various dealers on issuing cheques and many of such cheques issued by the detenu got bounced. It is no doubt true that these offences are coming within Chapter XVII of

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the Indian Penal Code and in that sense it can be easily concluded that detenu was a 'Goonda' within the meaning of Section 2(f) of the Tamil Nadu Act 14 of 1982. However, under Act 14 of 1982, merely because some person is a Goonda is not a ground to detain such person. Under Section 3, the authority can pass the preventive order of detention to prevent the person "acting in a manner prejudicial to the maintenance of public order" and not otherwise.

17. As per Section 2(a)(iii), "acting in any manner prejudicial to the maintenance of public order" means - in the case of a goonda, when he is engaged, or is making preparations for engaging, in any of his activities as a goonda which affect adversely, or are likely to affect adversely, the maintenance of public order.

As per the explanation, public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely, if any of the activities, directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health or ecological system.

18. Keeping in view the above aspect, as rightly submitted by the counsel for the petitioner that the acts of the detenu were likely to affect many individuals, but we do not think such acts of cheating can be construed to be affecting or causing danger or alarm or a feeling of insecurity among the general public.

19. Learned Addl. Public Prosecutor appearing for the State has submitted that in the ground case, as against the detenu, there is not only the allegation of commission of offence under Section 420 IPC. but also under Sections 506(ii) and 341 IPC., which were likely to affect public order rather than law and order.

20. The background of the alleged occurrence has already been noticed. Complainant and his colleague, who had come to the shop, were allegedly threatened. Even though it has been stated in the grounds of detention that nearby shop owners have witnessed the incident, to overcome the sense of insecurity or danger, it is hard to accept the conclusion keeping in view the setting and circumstances under which the alleged offences are said to have been committed.

21. The law relating to preventive detention, being draconian in nature, the detaining authority is not expected to pass such orders unless there is compelling necessity. It is of course true that such orders are to be passed on the subjective

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satisfaction, however, when such subjective satisfaction on the face of it is arbitrary and wholly illogical, the Courts have the jurisdiction nay, the duty, to protect the citizen. The distinction between the activities which are prejudicial to the maintenance of public order and the activities which may affect law and order is well recognized by the Supreme Court in 2004 SCC (Cri) 1944 (COMMISSIONER OF POLICE AND OTHERS v. SMT.C. ANITA), wherein it was observed :-

> "7. ... The crucial issue is whether the activities of the detenu were prejudicial to public order. While the expression "law and order" is wider in scope inasmuch as contravention of law always affects order, "public order" has a narrower ambit, and public order could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. The distinction between the areas of "law and order" and "public order" is one of the degree and extent of the reach of the act in question on society. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of the public, it could raise problem of law and order only. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps to distinguish it as an act affecting "public order" from that concerning "law and order". ..."

22. Applying the above test to the facts of the present case, we are of the considered opinion that the various acts allegedly committed by the detenu can only be considered as acts affecting the law and order and not affecting the public order and, therefore, the detention order cannot be sustained.

23. It is of course true that the detenu is a Goonda within the meaning given to such term in Act 14 of 1982 in the sense that he has repeatedly committed the offence under Chapter XVII. However, it cannot be concluded by any stretch of imagination that such activities even though against several individuals in isolated instances had the effect of prejudicing the maintenance of public order.

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24. For the aforesaid reason, the detention order is liable to be quashed and the detenu shall be released forthwith unless his presence is required in any other case.

We Place on record our appreciation for the valuable assistance rendered by Mr.Abudukumar Rajaratnam as Amicus curiae.

dpk

Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1. The Secretary to Government, Home
   Prohibition & Excise Department,
   Fort St. George, Secretariat,
   Chennai 600 009.

The Commissioner of Police, Greater Chennai,
Egmore, Chennai

3. The Public Prosecutor,
   High Court, Madras.

4. The Superintendent, Central Prison, Chennai

5. The Joint Secretary to the Government
of Tamil Nadu
Public (Law and ORder) Department , Fort Saint George,
Chennai

+ one cc to Mr. S. Sathish Rajan, Advocate sr no. 51123

jrg(co)
nm(27.08.07)

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